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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4630 OF 2005

Wasp Pumps Pvt. Ltd. ... Petitioners

V/s.

Sanjay D. Patil & Ors. ... Respondents

Mr.C.U. Singh for Petitioners
Mr.P.M. Palshikar for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 15, 2005**

P.C.:

. The Petitioners challenge the order of the Industrial Court dated 9.4.2005. The Petitioners have sought by its application dated 15.3.2005 amendments to the written statement. They have also sought permission to lead evidence in order to establish that the respondent-workmen were all employed elsewhere during the time they were suspended from service with the Petitioner. The complaint filed by the respondent-workmen is for subsistence allowance during the period that they were under suspension. The Industrial Court has refused permission for amendment as also for leading evidence to establish that the respondent-workmen were gainfully employed during their suspension period.

2. By a purshis dated 6.11.2001, the Petitioners sought seven days' time for making full payment of the

subsistence allowance as they were facing a financial crunch. The Petitioners had already paid 50% of the amount. An order was passed below exhibit C3 on 6.11.2001 directing the Petitioner to pay subsistence allowance in accordance with law i.e., full wages from October 2000. A further order of 6.3.2002 modified the earlier order of 6.11.2001. The Industrial Court directed payment to be made within 10 days from that date. According to the Respondent-workmen, the amounts paid are less than the amounts due to them. Furthermore, it is contended that after 15.9.2001, the Petitioners have neither deposited the subsistence allowance in the Industrial Court nor paid the same to the workmen.

3. In this view of the matter, I am of the opinion that the following order will serve the interests of justice:

i) The petitioners shall pay to the workmen the subsistence allowance from 16.9.2001 onwards upto 15.3.2005. This amount shall be calculated by the Petitioners and a statement furnished to the Respondent-workmen.

ii) The amounts shall be accepted by the Respondent-workmen without prejudice to their rights and contentions to claim a higher amount.

iii) On such payment being made to the Respondent-workmen, the Industrial Court will allow amendments as sought by the application dated 15.3.2005. The Industrial Court will also allow the Petitioner to lead evidence to demonstrate that the respondent-workmen have been employed during their period of suspension.

iv) If such evidence is led, the respondent-workmen will be entitled to lead evidence in rebuttal.

v) In the event the Industrial Court finds on evidence that the Respondent-workmen were employed elsewhere, the Industrial Court shall adjust the amounts already paid against any amount which would be due and payable to the Respondent workmen.

4. It is clarified that the earlier order of the Industrial Court for payment of subsistence allowance has not been set aside and the Petitioner is expected to comply with the same during the pendency of the comlaint, unless it is modified.

5. Writ Petition is disposed off in the above terms.